

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	CR. NO. <u>2:07-CR-136-MHT</u>
)	
KEITH ANDERSON)	
)	

GOVERNMENT’S JANUARY 2, 2008 SENTENCING MEMORANDUM

Comes now the United States of America, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and files this supplemental sentencing memorandum to advise the Court about an issue that was raised in the status conference held earlier this morning.

The Government is currently awaiting approval from the Office of the Solicitor General to file a petition for rehearing *en banc* in the case of *United States v. Michael David King*, No. 07-11808 (M.D. Al. No. 05cr301-WHA), 2007 U.S. App. LEXIS 28912 (11th Cir. Dec. 14, 2007). According to the Rules of the Eleventh Circuit Court of Appeals, a petition for rehearing ordinarily must be filed within 21 days of entry of judgment. *See* Fed. R. App. P. 40; 11th Cir. R. 40-3. Therefore, the normal operation of the Rules would require any petition in the *King* case to be filed on or before Friday, January 4, 2008.

Because approval from the Solicitor General is still pending, the Government has asked the Eleventh Circuit for a twenty-eight (28) day extension of time to file its petition for rehearing. If the Court should grant that extension, the petition would be due to be filed no later than Friday, February 1, 2008.

As requested, the Government will continue to advise this Court of the progress of the *King* case and any other pertinent developments in the law. In the meantime, the Government maintains that the *King* decision is contrary to the holding in *Deal v. United States*, 508 U.S. 129 (1993) and continues to reserve its objection on this issue for appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to defense counsel Keith Rodgers, Esq. and Stephen NeSmith, Esq.

Respectfully submitted,

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